



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Raytheon Support Services Company
File: B-234920; B-234920.2
Date: July 27, 1989

DIGEST

1. Agency cost realism analysis had a reasonable basis where the agency reviewed awardee's responses to agency cost discussions, verified labor categories, labor mix, labor hours proposed and burden rates, verified other miscellaneous direct costs, and verified awardee's overhead and general and administrative rates with the Defense Contract Audit Agency.
2. Protest that agency did not conduct a proper cost realism analysis of awardee's proposal is denied where, even though agency accepted awardee's zero percent general and administrative rate, under the contract awarded the firm waived its right to recover these costs throughout the life of the contract and agreed that these costs will not be allocated to any other government contract.
3. Protester's contention that the contracting agency improperly evaluated its technical proposal is denied where record shows that agency's evaluation of protester's proposal was reasonable and in accordance with the evaluation criteria.

DECISION

Raytheon Support Services Company protests the award of a cost-plus-award-fee contract to Burnside-Ott Aviation Training Center, Inc., under request for proposals (RFP) No. N68520-87-R-0018, issued by the Naval Aviation Depot Operations Center. The RFP was issued in connection with a cost comparison under Office of Management and Budget (OMB) Circular No. A-76. In its initial protest, Raytheon contends that the Navy did not properly evaluate the cost realism of Burnside-Ott's cost proposal and, in a supplemental protest, Raytheon argues that the Navy did not properly evaluate Raytheon's technical proposal. We deny the protests.

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The RFP contemplates the award of a cost reimbursement contract for aircraft intermediate level maintenance repair and overhaul services at six Naval Air Stations. The contract is for a 6-month base period with four 1-year options. The RFP listed, in descending order of importance, the evaluation criteria of program requirements, organization/experience, management, transition and cost. Offerors were informed that the first factor was four times as important as the fourth factor. The RFP provided that cost was not as critical as the technical factors but its degree of importance would increase with the degree of equality of the proposals. Cost was to be evaluated on the basis of realism and, for purposes of award, the total cost of the basic requirements was to be evaluated together with the total cost for all options. The RFP also provided that award would be made to the offeror whose proposal offers the greatest value and is most advantageous to the government and reserved the right to the Navy to award on the basis of cost, if offerors' technical proposals in the competitive range were deemed substantially equal.

Eight timely proposals, including offers from Raytheon and Burnside-Ott, were received in response to the RFP. As the result of the initial technical and cost evaluations, a competitive range was established including five of these offerors. Based on initial evaluation, Raytheon's technical score was 877 points; its cost was \$78,254,742. Burnside-Ott received 839 points; its cost was \$81,722,058. Discussions were conducted with the competitive range offerors. Revised offers were submitted and evaluated. The technical evaluation committee found that, after revised submissions, both Burnside-Ott and Raytheon rated somewhat lower technical scores in some areas because of their responses to discussion questions. Raytheon was scored 840 points, Burnside-Ott 836 points. However, it was determined from the evaluation of the revised proposals that Raytheon, Burnside-Ott and a third company submitted proposals that were superior to the other offers and that these proposals were "essentially technically equal." Best and final offers (BAFOs) were requested from these three offerors.

Since Burnside-Ott, in its BAFO submission, proposed the lowest cost at \$73,597,515, compared to \$73,852,230 proposed by Raytheon, the Navy evaluated its cost first. The Navy found Burnside-Ott's cost to be realistic. Because Burnside-Ott's evaluated cost did not exceed the cost of either Raytheon's offer or the third offeror's proposal, and since the Navy anticipated only upward adjustments in the other proposals, based on proposed manning levels, the Navy did not evaluate the other offerors' proposed BAFO costs.

The Navy determined that award to Burnside-Ott, as the lowest proposed/evaluated cost offeror, would be most advantageous to the government. Award of a contract to Burnside-Ott has not been withheld based upon the agency's determination that urgent and compelling circumstances exist which would not permit awaiting our determination in the matter. 31 U.S.C. § 3553(d)(2) (Supp. IV 1986); 4 C.F.R. § 21.4(b) (1988).

Raytheon first protests to our Office that the Navy failed to conduct a proper cost realism analysis of Burnside-Ott's unrealistically low cost proposal. Raytheon's cost realism allegation is based primarily on the fact that Burnside-Ott proposed a staffing level approximately 20 percent greater than Raytheon's proposed staffing. Raytheon argues that Burnside-Ott's larger staff could not be realistically evaluated at a lower estimated cost to the government. In support of its contention that the Navy's cost realism was improper, Raytheon raises three allegations. First, Raytheon argues that Burnside-Ott proposed direct labor at the very bottom of the wage scale and that the Navy's cost realism analysis accepted Burnside-Ott's contention in its BAFO that it would be able to employ highly skilled personnel at wages markedly less than the wages its competitor would pay. Second, Raytheon argues that the Navy failed to consider the impact of Burnside-Ott's proposal to allocate no General and Administrative (G&A) expenses and only some overhead expenses in conducting its cost realism analysis of Burnside-Ott's BAFO. Lastly, Raytheon objects to the Navy's decision to only perform a cost analysis on Burnside-Ott's BAFO and not the other offerors in the competitive range.

Initially, we note that the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved. This is so because the agency is in the best position to assess "realism" of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost analysis. Since the cost realism analysis is a judgment function on the part of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Quadrex HPS, Inc., B-223943, Nov. 10, 1986, 86-2 CPD ¶ 545.

The record (portions of which were not released to the protester but which we have reviewed in camera) indicates that the Navy conducted a detailed cost analysis of Burnside-Ott's initial and BAFO proposal. The Navy

initially performed a cost realism analysis on the five offerors in the competitive range. In its initial cost realism analysis, the Navy relied upon information from the cognizant Defense Contract Audit Agency (DCAA) auditors for verification of labor and burden rates proposed and from the requiring activity for verification of labor categories, labor mix and labor hours proposed. This analysis resulted in upward adjustments to both Raytheon's and Burnside-Ott's proposed costs. Both Raytheon and Burnside-Ott were advised of the deficiencies in their initial cost proposals during discussions and both submitted revised cost proposals in response to the discussions.

As previously stated, since Burnside-Ott proposed the lowest BAFO cost, its BAFO cost proposal was evaluated first for cost realism. With the exception of the proposed G&A expense and proposed fee, Burnside-Ott's BAFO was unchanged. Based on information from the technical evaluation team and the DCAA auditor, the agency determined all labor hours, labor mix, labor rates, labor escalation, staffing levels and burden rates proposed by Burnside-Ott in its BAFO remained acceptable. The record also shows that, contrary to Raytheon's contention that Burnside-Ott only proposed labor rates at the low end of the scale, Burnside-Ott's labor rates with respect to the individual categories were comparable to Raytheon's and, in fact, Burnside-Ott's total direct labor costs were greater than Raytheon's.

Additionally, because Burnside-Ott, in its BAFO, proposed no charge for G&A expenses throughout the life of the contract, the Navy discussed the matter with DCAA to determine the acceptability of this strategy. The Navy was advised that, although the proposed no-charge for G&A expense was not consistent with Burnside-Ott's Cost Accounting Standards Board's disclosure statement filed with DCAA which sets forth the company's accounting methods, since the contract itself contains a provision wherein Burnside-Ott waives the G&A charges and agrees that the G&A will not be allocated to any other contract, the offer could be accepted. We find nothing improper with the Navy's acceptance of Burnside-Ott's offer of no G&A charges, since G&A is not reimbursable under the contract and is not a cost the government will pay. See, e.g., Support Systems Assoc., Inc., B-232473, B-232473.2, Jan. 5, 1989, 89-1 CPD ¶ 11. The record further indicates the Navy intends to monitor this contract and other Burnside-Ott contracts to insure that these expenses are not applied to this procurement or to any other effort.

Raytheon's primary basis for questioning the agency's cost realism analysis of Burnside-Ott's cost proposal is the fact that Burnside-Ott proposed 20 percent greater staffing than

Raytheon at a total cost (including indirect costs) lower than Raytheon proposed. However, the record shows that Burnside-Ott's direct labor costs were significantly higher than Raytheon's proposed costs and that Burnside-Ott's cost proposal did reflect the cost of its larger staff. The agency also found that the labor rates proposed by both offerors' were comparable and reasonable. Burnside-Ott's offer to waive G&A and to offer a lower labor overhead rate, which the agency found acceptable, resulted in Burnside-Ott's slight cost advantage in the competition. Under these circumstances, we conclude that the agency's determination that Burnside-Ott's evaluated cost was low was reasonable.^{1/}

To the extent that the protester contends that Burnside-Ott's waiver of G&A is an attempt to "buy in", we have held that in a cost-reimbursement situation, an alleged "buy-in" (offering cost estimates less than anticipated costs with the expectation of increasing costs during performance) by a low-cost offeror furnishes no basis to challenge an award where, as here, the agency reasonably determines the realistic estimated cost of contractor's performance before award and makes award based on that knowledge. See Bell Aerospace Co., et al., 54 Comp. Gen. 352 (1974), 74-2 CPD ¶ 248.

Raytheon next argues that the Navy improperly evaluated its technical proposal. In particular it argues that the Navy in conducting the technical evaluation of BAFOs improperly reduced Raytheon's evaluated technical score. Raytheon specifically alleges that the Navy improperly downgraded Raytheon in three evaluation areas, involving the maintenance function and drug/alcohol prevention program^{2/}, that were not the subject of negotiations. Raytheon further argues that the Navy also used an undisclosed evaluation factor, personal delay and fatigue time (employee productive time) in its evaluation of manning and did not uniformly apply it to all offerors.

^{1/} We find no merit to Raytheon's argument that the Navy should have made downward adjustments to its cost proposal for Raytheon's "inadvertent" failure to take into consideration any "productivity" or "learning curve" reductions in its cost proposal. The burden is on the offeror to submit a cost proposal that takes into consideration all aspects of its technical approach and the agency has no duty to prepare or revise an offeror's proposal.

^{2/} Since the agency only reduced Raytheon's drug/alcohol program evaluation one point after discussions, we find the reduction in this area did not prejudice Raytheon.

First, as indicated above, the Navy did not perform a technical evaluation of Raytheon's BAFO. The initial technical evaluation established a point score for each offeror and these scores were adjusted (both upward and downward) to reflect the offerors' responses during discussions. After discussions were concluded, technical proposals were rescored and BAFOs requested. Raytheon did not revise the technical portion of its BAFO.

With regard to the Navy's downgrading Raytheon in the two technical evaluation areas pertaining to the maintenance function, the Navy states that these areas assess a contractor's capability to assure and control maintenance work flow. The Navy asserts that two discussion questions specifically related to the maintenance function and alerted Raytheon to the fact that the Navy perceived its staffing to be insufficient in this area which directly relates to Raytheon's ability to successfully perform. The Navy states that, while Raytheon's plan to perform the maintenance function was excellent, the evaluation team believed the number of productive manhours proposed, as a result of discussions, posed some risk regarding the successful performance of the plan they proposed.

The governing provision of the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (Supp. IV 1986), as reflected in Federal Acquisition Regulation (FAR) § 15.610(b) (FAC 84-16), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd on reconsideration, B-220049.2, Apr. 7, 1986, 86-2 CPD ¶ 333. However, where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible score. Varian Assocs., Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153.

Our review of the record shows no support for the protester's assertion that these areas were not brought to its attention during discussions. The record indicates that, during discussions, the Navy indicated to Raytheon that its proposed manning was considered to be insufficient. Raytheon, however, argues that the discussion questions as posed related to the organization/experience evaluation factor and not the program requirements, that is the type of work to be done, that are at issue here. We disagree. Specifically, Raytheon was asked to provide rationale for its proposed staffing for the maintenance/material function at two locations. Raytheon was also advised that its total overall manning was insufficient to satisfactorily perform

all program requirements. Thus, the discussion questions clearly indicated the agency's concern that Raytheon's staffing and organization was insufficient to meet the program requirements. The record shows that Raytheon's revised technical proposal, submitted in response to the discussion questions, was still considered a risk because of the manning proposed and thus the Navy reasonably reduced Raytheon's score in these areas affected by manning.

Raytheon further argues that since Raytheon's revised proposal was submitted and evaluated prior to the request for BAFOs, it should have been given the opportunity to correct the stated deficiencies. An agency is not required to help an offeror by conducting successive rounds of discussions until deficiencies are corrected. Realty Ventures/Idaho, B-226167, May 18, 1987, 87-1, 87-1 CPD ¶ 523. Accordingly, we find no merit to the protester's contention that the Navy should have reopened negotiations to discuss the inadequate proposed manning that had previously been brought to Raytheon's attention.

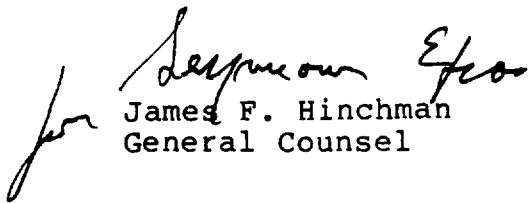
Raytheon also contends that its score was reduced in several areas concerning staffing because the Navy used a previously undisclosed evaluation factor, employee productive time. The agency reports that in evaluating staffing it did use the employee productive time factor which Raytheon itself introduced as a factor in its proposal by stating in its revised technical proposal that its efficiency rate was 87 percent. As a result, Raytheon was downgraded in those areas.

Although employee productive time was not a stated evaluation factor, in this type of labor intensive contract the number of productive manhours is extremely important and the selection of a contractor which can best perform this contract involves close scrutiny of the labor mix and labor quantity. While technical evaluations must be based on the stated evaluation criteria, the interpretation and application of such criteria often involve subjective judgments. Thus, we will not object to the use of an evaluation factor not specifically stated in the RFP where, as here, it is reasonably related to the specified criteria and the correlation is sufficient to put offerors on notice of the additional criterion to be applied. See Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21 at 7, 8. We do not think that the agency's evaluation of staffing using the employee productive time factor submitted by Raytheon was unreasonable. Further, after considering the employee productive time, the agency reasonably concluded that Raytheon's staffing proposal was more risky than initially

evaluated, and thus downgraded Raytheon based on its revised proposal.

Finally, even accepting Raytheon's argument that its initial technical score should not have changed, or its score should have been raised after discussions, the protester has not established that the Navy's conclusion that the three offers in the competitive range were technically equal was unreasonable and that the Navy's award to Burnside-Ott, as having submitted the most advantageous offer to the government, was improper. Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466.

The protests are denied.

for
James F. Hinchman
General Counsel